

**54 Greene Street Realty Co. v Shook**

2003 NY Slip Op 30027(U)

December 24, 2003

Supreme Court, New York County

Docket Number:

Judge: Sherry Klein Heitler

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 30**

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**54 GREENE STREET REALTY CO.,**

Index No.122800/02

Plaintiff,

**DECISION AND ORDER**

-against-

007

KENNETH ROBERT SHOOK and  
ILKKAJARVILTURI,

Defendants.

**SCANNED  
JAN 09 2004**

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**SHERRY KLEIN HEITLER, J.:**

Plaintiff **54 Greene Street Realty Co T.** (Landlord) moves for an order granting reargument and renewal of a prior motion and cross-motion for summary judgment. Previously, this court granted partial summary judgment in favor of defendants Kenneth Robert Shook and Ilkka Jarvilturi.

Landlord had sought to evict defendants on the ground that Shook, the **prime** tenant of the subject loft unit, had overcharged his roommate, Jarvilturi. On July 3, 2003, this court issued a decision holding that, although Shook charged Jarvilturi a rent in excess of that permitted by law, such overcharge did not warrant the eviction of Shook and Jarvilturi. This court directed Shook to return to Jarvilturi any rent in excess of 50 percent of the rent payable by Shook to Landlord, and stated that, upon Shook's tender of the required sum to Jarvilturi, and payment to Landlord of any past due rent or use and occupancy, the entire complaint would be dismissed.

Landlord has not shown that this court overlooked any controlling facts, misapprehended the law or otherwise mistakenly arrived at its determination (Foley v Roche, 68 AD2d 558 [1<sup>st</sup> Dept 1979]).

Landlord **seeks** renewal of the motion on the ground that Shook has failed to comply with this court's directive, in that he has not refunded to Jarvilturi the entire amount of the overcharge.

However, Shook and Jarvilturi have agreed, between themselves, that the refund will be made by means of a reduced rent for each month over the period of one year. While the better practice would have been for defendants to obtain the consent of the court before making such an agreement, this court will permit defendants to implement this court's decision by means of a credit spread over one year. The use of credits as a remedy for rent overcharges is not improper or unusual. Under the rent stabilization law, for example, tenants may recover overcharges in the form of either a refund or a credit (see NYC Admin Code § 26-511(c)).

Landlord has not been prejudiced by Jarvilturi's agreement to recover the overcharge over a reasonable time period, i.e. one year.

Landlord contends that it is entitled to attorneys' fees, pursuant to the lease, and this court, after considering the reargument, agrees with the landlord's position. Although this court gave Shook an opportunity to avoid eviction by refunding the overcharge to Jarvilturi, Landlord nevertheless established that the rent collected by Shook from Jarvilturi was higher than he was permitted to collect. Since Landlord has prevailed regarding the central relief sought, it is entitled to recover attorneys' fees (Dara Realty Assocs. v Schachter, 2003 WL 21911073 [App Term 1<sup>st</sup> Dept.]; 326-330 East 35<sup>th</sup> St. Assoc. v Sofizade, 2003 WL 21297316 [App Term 1<sup>st</sup> Dept.][landlord established that the tenant's non-payment of rent was a breach of lease, even though the court stayed enforcement of the judgment on condition that the tenant make timely rent payments in the future]; Peachy v Rosenzweig, 215 AD2d 301 [1<sup>st</sup> Dept 1995][where the landlord recovered a substantial judgment and the only favorable result for the tenant was limited relief on one of its affirmative defenses, the landlord was entitled to attorneys' fees]; 490 Owners Corp. v Israel, 189 Misc 2d 34 [App Term 2d Dept 2001][the landlord successfully established that the tenant's use of a washing

machine constituted a violation of the lease, even though the court gave the tenant an opportunity to cure the breach pursuant to RPAPL § 753(4)]. The issue of attorneys' fees shall be sent to a referee

Accordingly, it is

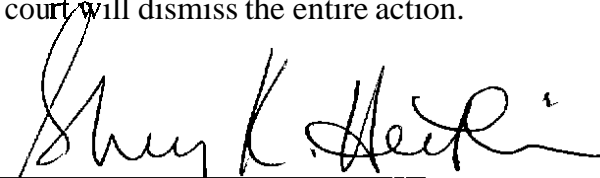
ORDERED that the motion is granted only to the extent that the issue of attorneys' fees is referred to a referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 43 17, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that the motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support Office (Room 31 1) to arrange a date for the reference to a Special Referee; and it is further

ORDERED that defendant Shook shall effect the necessary rent refund by means of giving Jarvilturi a monthly credit equal to one-twelfth of the amount of the refund, until Jarvilturi has recovered the entire refund to which he is entitled, and that upon Shook's presentation to this court of evidence that the entire refund has been effected, this court will dismiss the entire action.

Dated: DECEMBER 24, 2003

  
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**SHERRY KLEIN HEITLER**  
J.S.C.